

FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2015 SEP 14 P 3:33

CUSTOMINK, LLC,  
Plaintiff,

v.

PRINTFLY CORPORATION d/b/a  
RUSHORDERTEES.COM,  
Defendant.

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

Civil Action No. 1:15cv1177  
GBL/TCB

**COMPLAINT**

Plaintiff CustomInk, LLC (“CustomInk”), by and through its undersigned counsel, hereby asserts the following against Defendant Printfly Corporation d/b/a Rushorderteesh.com (“Printfly” or “Defendant”). CustomInk makes these allegations on personal knowledge, and on information and belief.

**INTRODUCTION**

1. Plaintiff CustomInk is an e-commerce company that owns and operates <http://www.customink.com> and <http://www.trycustomink.com> (collectively the “CustomInk Site”). Through the CustomInk Site, customers can create and order custom-designed apparel and other consumer products, such as tote bags, water bottles and bumper stickers.

2. CustomInk has spent fifteen years—and invested millions of dollars—marketing and promoting its products and services under the well-known CUSTOMINK trademark. During this period, CustomInk has developed a reputation for its creative and innovative website, for its original and licensed library of two-dimensional graphic designs, and for the quality of its custom printing and customer service. As a result, the CUSTOMINK trademark has become

synonymous with CustomInk's high quality custom-designed products and related services.

3. CustomInk has repeatedly been recognized as a top internet retailer, and has shipped over 60 million units of custom-designed apparel and consumer products since its inception.

4. CustomInk's commitment to excellence in its products and customer service is such that it prominently streams live, uncensored customer reviews on the CustomInk Site. As of September 14, 2015, 96.4% of the last 1,000 customers to review CustomInk's products and services indicated that they would order from CustomInk again. CustomInk has built its business and developed significant goodwill in its CUSTOMINK trademark on its stellar—and completely transparent—customer satisfaction record.

5. On information and belief, Defendant Printfly is an e-commerce company that owns and operates <http://www.rushorderteesh.com> (the "Rushorderteesh Site"), a competitor of CustomInk in the custom-designed apparel and consumer products marketplace.

6. This action arises out of Defendant's intentional, prominent, systematic and unlawful encroachment on CustomInk's business by, among other acts, (a) its use of terms which are substantially indistinguishable from and/or confusingly similar to CustomInk's federally-registered CUSTOMINK trademark—namely, CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK—in the headings and text of paid search engine advertisements and on the landing page and other pages of the Rushorderteesh Site, (b) its intentional misrepresentations about CustomInk to consumers made for the express purpose of diverting business from CustomInk to itself, (c) its intentional copying of CustomInk's proprietary two-dimensional graphic designs, and (d) its false and deceptive advertising and marketing of its services, including, without limitation, promoting materially incomplete and

misleading “100% Unfiltered” and “uncensored” “customer satisfaction” data, engaging in deceptive pricing and discounting practices, and making false claims concerning the speed of its free delivery of custom-designed apparel as compared to its competitors, including CustomInk.

7. Defendant is making prominent and extensive use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK in an attempt to improperly trade off of the extensive goodwill CustomInk has developed in the CUSTOMINK trademark over the last fifteen years, and to increase its market share in the custom-designed apparel and consumer products marketplace by purposefully confusing consumers searching for the CustomInk Site, misdirecting them to the Rushorderteeshop.com Site, and creating the false and erroneous impression that the products and services provided by Defendant through the Rushorderteeshop.com Site have been approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

8. On information and belief, Defendant is also knowingly and intentionally engaging in the unauthorized copying and reproduction of CustomInk’s proprietary two-dimensional graphic designs, including, without limitation, CustomInk’s original and duly registered Surfer Design Copyright.

9. On further information and belief, Defendant is engaged in false advertising and purposefully misleading and deceptive trade practices, including, without limitation, (a) purporting to post “100% Unfiltered Customer Reviews” on the Rushorderteeshop.com Site, when in fact it only posts a small subset of carefully selected “positive” reviews, (b) advertising inaccurate and highly misleading product pricing, (c) continuously promoting the same artificial “discounted” pricing schedule, that bears no relation to any pricing schedule that Defendant has ever actually offered its products or services under, and (d) falsely claiming that it is the

“Nations Fastest Screen Printer” and that it offers the “Fastest Free Shipping” (*i.e.*, the fastest free delivery to a customer’s door) of custom-designed apparel available.

10. Not surprisingly, Defendant’s infringing and deceptive conduct has achieved its nefarious goal. For example, CustomInk has been advised of a recent incident in which a return CustomInk customer mistakenly called *Defendant* to discuss a re-order of custom-designed products from *CustomInk* after viewing one of Defendant’s misleading search engine advertisements for the Rushorderteesh Site featuring the term CUSTOM INK, and dialing the telephone number displayed in the advertisement under the mistaken belief that it was CustomInk’s telephone number.

11. To make matters worse, CustomInk has been further advised that the Printfly representative who fielded the confused CustomInk customer’s call deceptively advised the customer that CustomInk was no longer in business, but that Defendant could fulfill the customer’s order in CustomInk’s place. On information and belief, such statements were made with the knowledge that they were untrue, and with the intent of diverting business away from CustomInk and to Defendant.

12. Such deceitful conduct is not only actionable in and of itself, but further confirms that Defendant is using the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK in a deliberate and calculated attempt to mislead consumers, including prior CustomInk customers, away from CustomInk, and to exploit such confusion to expand its market share in the custom-designed apparel and consumer products business.

13. Accordingly, CustomInk brings this action for injunctive relief and damages for Defendant’s infringement of the CUSTOMINK trademark in violation of 15 U.S.C. § 1114; unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a)(1)(A);

false and deceptive advertising in violation of 15 U.S.C. § 1125(a)(1)(B); trademark infringement under the common law of Virginia; infringement of CustomInk's copyright in violation of 17 U.S.C. § 501; and deceptive or misleading advertising and practices in violation of the statutory law of Virginia.

### **JURISDICTION AND VENUE**

14. This Court has subject matter jurisdiction over CustomInk's Lanham Act and Copyright Act claims pursuant to 28 U.S.C. §§ 1331 and 1338(a), and over the remaining claims under 28 U.S.C. §§ 1338(b) and 1367(a).

15. This Court has personal jurisdiction over Defendant because Defendant has purposefully availed itself of the benefits of this forum by, among other things, engaging in substantial, continuous and systematic activities within this district. Defendant maintains an interactive e-commerce website—the Rushorderteers Site—through which it regularly transacts business with consumers located within this district, and Defendant directs search engine advertisements for its services to consumers located within this district. Furthermore, Defendant has directed its unlawful conduct to CustomInk, which resides in this district.

16. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

### **PARTIES**

17. Plaintiff CustomInk, LLC is a Delaware limited liability company with its principal place of business in Fairfax, Virginia.


18. On information and belief, Defendant Printfly Corporation is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.


**FACTUAL ALLEGATIONS*****The CUSTOMINK Marks***

19. Since 2000, CustomInk has been continuously marketing, promoting and selling custom-designed apparel and consumer products and related services under the CUSTOMINK trademark.

20. As a result of these efforts, the significant resources CustomInk has devoted to promoting its custom-designed apparel and consumer products and related services under the CUSTOMINK trademark, and the extensive media coverage that CustomInk's high quality products and services offered under the CUSTOMINK mark have received, the CUSTOMINK mark has achieved strong consumer recognition.

21. CustomInk owns the following federal trademark registrations for the CUSTOMINK word and design marks (hereinafter collectively referred to as the "CUSTOMINK Marks"):

Mark	Reg. No.	Reg. Date	Class(es) and Goods/Services
CUSTOMINK	2,714,550	May 6, 2003	Class 35 – for computerized on-line retail services in the field of customized t-shirts
CUSTOMINK	4,382,420	August 13, 2013	Class 35 – for on-line retail store services featuring custom-designed general consumer merchandise Class 40 – for, <i>inter alia</i> , custom imprinting of clothing and general consumer products Class 42 – for, <i>inter alia</i> , computer aided design for others
 CustomInk	4,382,417	August 13, 2013	Class 18 – for, <i>inter alia</i> , all-purpose carrying bags, backpacks and tote bags Class 21 – for, <i>inter alia</i> , drinking cups, insulating sleeve holder for bottles, and plastic water bottles sold empty Class 25 – for, <i>inter alia</i> , apparel Class 35 – for on-line retail store services featuring custom-designed general consumer merchandise Class 40 – for, <i>inter alia</i> , custom imprinting of clothing and general consumer products Class 42 – for, <i>inter alia</i> , computer aided design for others

Mark	Reg. No.	Reg. Date	Class(es) and Goods/Services
	4,386,573	August 20, 2013	Class 18 – for, <i>inter alia</i> , all-purpose carrying bags, backpacks and tote bags Class 25 – for, <i>inter alia</i> , apparel

True and correct copies of CustomInk’s federal registration certificates for the foregoing CUSTOMINK Marks are attached hereto as Exhibit A.


22. Each of the CUSTOMINK Marks is in full force and effect, and U.S. Trademark Registration No. 2,714,550 is incontestable pursuant to 15 U.S.C. § 1065.

23. The CUSTOMINK Marks are among CustomInk’s most important assets.

***CustomInk’s Proprietary Graphic Designs***

24. CustomInk designs, creates and acquires proprietary two-dimensional graphic designs for use by consumers of the CustomInk Site, which are original works of authorship. CustomInk holds valid copyrights in many of these two-dimensional graphic designs, a number of which have been properly registered with the U.S. Copyright Office.

25. Among CustomInk’s duly registered two-dimensional graphic designs is U.S. Copyright Registration No. VA 1-786-641, effective as of August 11, 2011, for its Surfer on a Wave, 134264 design (the “Surfer Design Copyright”), as depicted below:

U.S. Copyright Registration No.	Two-Dimensional Design
VA 1-786-641	

A true and correct copy of a printout from the U.S. Copyright Office’s website reflecting CustomInk’s federal registration for its Surfer Design Copyright is attached hereto as Exhibit B.

26. CustomInk has duly complied with all relevant requirements of the U.S. Copyright Act with respect to the Surfer Design Copyright.

***Defendant's Improper Conduct***

27. On information and belief, at all times relevant hereto, Defendant has had actual and constructive knowledge and notice of the CUSTOMINK Marks, the association of the CUSTOMINK Marks with CustomInk, and CustomInk's exclusive right to use and exploit the CUSTOMINK Marks and the significant goodwill associated therewith.

28. Defendant is intentionally and prominently using the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK—which terms are substantially indistinguishable from and/or confusingly similar to the CUSTOMINK Marks—in the headings and text of paid search engine advertisements, in a manner intended to both (a) misdirect consumers searching for the CustomInk Site to the Rushorderteers Site, and (b) create a false and erroneous impression that the products and services provided by Defendant through the Rushorderteers Site have been approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

29. Screenshots of certain examples of Defendant's paid search engine advertisements prominently featuring the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK, which appear as the top search result of various search engine searches of the terms "Customink", "Custom Ink", "Custom Inks", "TryCustomInk" and "Custom Inked" appear below:



Google

custom ink



Web Shopping Images Videos Maps More Search tools

About 15,700,000 results (0.25 seconds)

**Custom Ink T-Shirts Fast - 25% Off, Free Shipping & Design**  
[www.rushorderteeshirts.com/](http://www.rushorderteeshirts.com/) • (877) 723-9767  
 4.8 ★★★★★ rating for rushorderteeshirts.com  
 Best Prices! Compare & Get More.  
 Rush Order Tees has 146 followers on Google+  
 See Our Product Catalog - Get Free Artwork Help - Contact Information

**CustomInk - Official Site - Custom T-Shirts. No Hassle**

[www.customink.com/](http://www.customink.com/) •  
 4.9 ★★★★★ rating for customink.com  
 Free Shipping. Live Expert Help.  
 Over 400 Styles Available • All-Inclusive Pricing • Free Expert Help & Review  
 CustomInk has 3,718 followers on Google+  
 Custom T-Shirts - Design Lab - Unisex Products - Sweats

**Custom T-Shirts - Design Your Own T-Shirts Online - Free ...**  
[www.customink.com/](http://www.customink.com/) • CustomInk •  
 15 years, 60 million custom t-shirts, 99% happy customers! CustomInk is the t-shirt  
 printing expert for your team, school, company, or any occasion.

#### Designing

It's fun and easy to create custom  
 shirts in the CustomInk Design ...

#### T-shirts

Design custom t-shirts with fast

#### Retrieve Your Design

Retrieve your CustomInk design by  
 entering your email address or ...

#### Design Ideas

Sports - College - Parties - Business -

## CustomInk

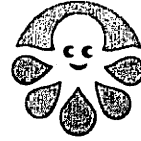
Company

CustomInk is an American-based online retail  
 company that enables customers to design and  
 order custom apparel such as t-shirts and  
 sweatshirts. Wikipedia

Customer service: 1 (800) 293-4232

CEO: Marc Katz

Founded: 2000



#### Profiles



Twitter



LinkedIn



Google+

#### People also search for



Zazzle



CafePress

GILDAN

Gildan

Google

custom ink



Web Shopping Images Videos Maps More Search tools

About 16,300,000 results (0.26 seconds)

**Custom Ink on T-Shirts - 25% Off, Free Shipping & Design**  
[www.rushorderteeshirts.com/](http://www.rushorderteeshirts.com/) • (877) 723-9767  
 4.8 ★★★★★ rating for rushorderteeshirts.com  
 Best Prices! Compare & Get More.  
 Rush Order Tees has 146 followers on Google+  
 See Our Product Catalog      Contact Information  
 Get Free Artwork Help      Customer Reviews - 5 Star

**CustomInk.com - CustomInk - Official Site**

[www.customink.com/](http://www.customink.com/) •  
 4.9 ★★★★★ rating for customink.com  
 Custom T-Shirts. No Hassle. Free Shipping. Live Expert Help.  
 Over 400 Styles Available • All-Inclusive Pricing • Free Expert Help & Review  
 CustomInk has 3,689 followers on Google+  
 Custom T-Shirts - Design Lab - Sweats - Youth Apparel

**Custom T-Shirts - Design Your Own T-Shirts Online - Free ...**

[www.customink.com/](http://www.customink.com/) • CustomInk •  
 15 years, 60 million custom t-shirts, 99% happy customers! CustomInk is the t-shirt  
 printing expert for your team, school, company, or any occasion.

#### Designing

It's fun and easy to create custom  
 shirts in the CustomInk Design ...

#### Unisex T-Shirts

#### Retrieve Your Design

Retrieve your CustomInk design by  
 entering your email address or ...

#### Design Ideas

## CustomInk

Company

CustomInk is an American-based online  
 company that enables customers to des  
 order custom apparel such as t-shirts a  
 sweatshirts. Wikipedia

Customer service: 1 (800) 293-4232

CEO: Marc Katz

Founded: 2000

#### Profiles



Twitter



LinkedIn



Google

#### People also search for




Zazzle



CafePress

GILDA

Gildan  
 Activewear

Google **custom ink** 

Web Shopping Images Videos Maps More Search tools

About 15,700,000 results (0.25 seconds)

**Custom Inked TShirts Fast - RushOrderTees.com**  
[www.rushorderteas.com/](http://www.rushorderteas.com/)  
 4.8 ★★★★★ rating for rushorderteas.com  
 25% Off, Free Shipping & Design! Best Prices! Compare & Get More  
 Rush Order Tees has 148 followers on Google+  
 See Our Product Catalog      Contact Information  
 Get Free Artwork Help      Customer Reviews - 5 Star

**CustomInk.com - CustomInk - Official Site**  
[www.customink.com/](http://www.customink.com/)  
 4.9 ★★★★★ rating for customink.com  
 Custom T-Shirts. No Hassle. Free Shipping. Live Expert Help.  
 Over 400 Styles Available - All-Inclusive Pricing - Free Expert Help & Review  
 CustomInk has 3,718 followers on Google+  
 Custom T-Shirts - Design Lab - Unisex Products - Infants & Toddlers

**Custom T-Shirts - Design Your Own T-Shirts Online - Free ...**  
[www.customink.com/](http://www.customink.com/) - CustomInk -  
 15 years, 60 million custom t-shirts, 99% happy customers! CustomInk is the t-shirt  
 printing expert for your team, school, company, or any occasion.




<p><b>Designing</b>              It's fun and easy to create custom shirts in the CustomInk Design ...</p> <p><b>T-shirts</b>              Design custom t-shirts with fast turnaround and all inclusive ...</p> <p><b>CustomInk Product Catalog ...</b>              Browse all of CustomInk's product categories in our online product ...</p>	<p><b>Retrieve Your Design</b>              Retrieve your CustomInk design by entering your email address or ...</p> <p><b>Design Ideas</b>              Sports - College - Parties - Business - K12 - School Pride</p> <p><b>View Mobile Site</b>              ... Track Your Order - Your Account - Raise Funds with Booster ...</p>
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**CustomInk**  
 Company




CustomInk is an American-based online retail company that enables customers to design and order custom apparel such as t-shirts and sweatshirts. Wikipedia



Customer service: 1 (800) 293-4232  
 CEO: Marc Katz  
 Founded: 2000


**Profiles**

 Twitter     LinkedIn     Google+

**People also search for**

 Zazzle     CafePress     Gildan  
 Gildan Activewear

Google **custom inks**  

W Images News More Search tools 

About 2,010,000 results (0.23 seconds)

**Create Custom T-Shirts - UberPrints.com**  
[www.uberprints.com/](http://www.uberprints.com/)  
 4.5 ★★★★★ rating for uberprints.com  
 Design Custom T-Shirts Online. No Minimums. Free Shipping!

**Baltimore's Best Printer - YourApparelShop.com**  
[www.yourapparelshop.com/](http://www.yourapparelshop.com/)  
 Schools, Teams, Events, Corporate 10% OFF 1st Order

**Buy Ink Cartridges Online - LDProducts.com**  
[www.ldproducts.com/](http://www.ldproducts.com/)  
 4.8 ★★★★★ rating for ldproducts.com  
 Shop Now & Save 10% Off All Orders! Order & Ship Today w/ Code SUMMER15  
 Friendly Customer Service - Exclusive Coupon & Offers - Quick Shipping  
 On-Time Shipping & Excellent Customer Service - Google Trusted Stores  
 Shop Office Supplies - Stock Up On Ink & Toner - LD Exclusive Coupons

**Custom T-Shirts - Design Your Own T-Shirts Online - Free ...**  
[www.customink.com/](http://www.customink.com/) - CustomInk -

**All Orders Ship Free**  
[www.4inkjets.com/Sale](http://www.4inkjets.com/Sale)  
 4.7 ★★★★★ rating for 4inkjets.com  
 Save Big on All Ink & Toner Brands.  
 Free Shipping for a Limited Time!

**Ink**  
[www.quill.com/ink](http://www.quill.com/ink)  
 Fast and Free Shipping Over \$45!  
 Get Ink & Printer Supplies at Quill

**Custom Inks on T-Shirts**  
[www.rushorderteas.com/](http://www.rushorderteas.com/)  
 4.8 ★★★★★ advertiser rating  
 (888) 839-5594  
 25% Off, Free Shipping & Design.  
 Best Prices! Compare & Get More

AT&T 4:15 PM google.com

Apple Disney ESPN Yahoo! New Jersey Local News, Breaking News, Sports & Weather - NJ.com

Web Search Images Maps Sign In

Google **trycustomink**

Web Slideshows Videos Images Maps More Search tools

**TryCustomInk.com - CustomInk Commercial - Design T-Shirts Online**  
[www.customink.com/tv](http://www.customink.com/tv)  
 As seen on TV: Get started designing your group t-shirts online. At Customink, we believe T-Shirts Unite!

Here  
 Create your own custom design using one of the ...

More results from customink.com -

**Design Lab - Create Your Own T-shirts Online - Custom T-Shirts**  
[www.customink.com/lab](http://www.customink.com/lab)  
 It's fun and easy to create custom shirts in the Customink Design Lab. Plus, sharing designs and collecting sizes from your group is a breeze.

**T-Shirt Maker - Custom T-Shirts**  
[www.customink.com/services/t-shirt-maker](http://www.customink.com/services/t-shirt-maker)  
 Calling all T-Shirt Makers! Customink makes it easy for you to make your own t-shirts online. No need for expensive, hard-to-figure-out software - just visit ...

**T-Shirt Prices - Price Ranges on Custom T-Shirts - CustomInk.com**  
[www.customink.com/prices/](http://www.customink.com/prices/)  
 Get an instant price quote on your T-shirt order with Customink's T-shirt pricing tool. Free Shipping! Live Expert Help!

**Try Custom Ink on T-Shirts & Apparel | RushOrderTees.com**  
<https://www.rushorderteas.com/blog/try-custom-ink/>  
 Feb 4, 2015 - try custom ink screen printing techniques. Whether you're a contractor looking to spread the word about your business, a group preparing for a ...

Search Cann - Web - trvcustomink

AT&T 7:34 PM search.yahoo.com

Apple Disney ESPN Yahoo! New Jersey Local News, Breaking News, Sports & Weather - NJ.com

YAHOO! **customink**

Web Local More

**Ads related to customink**

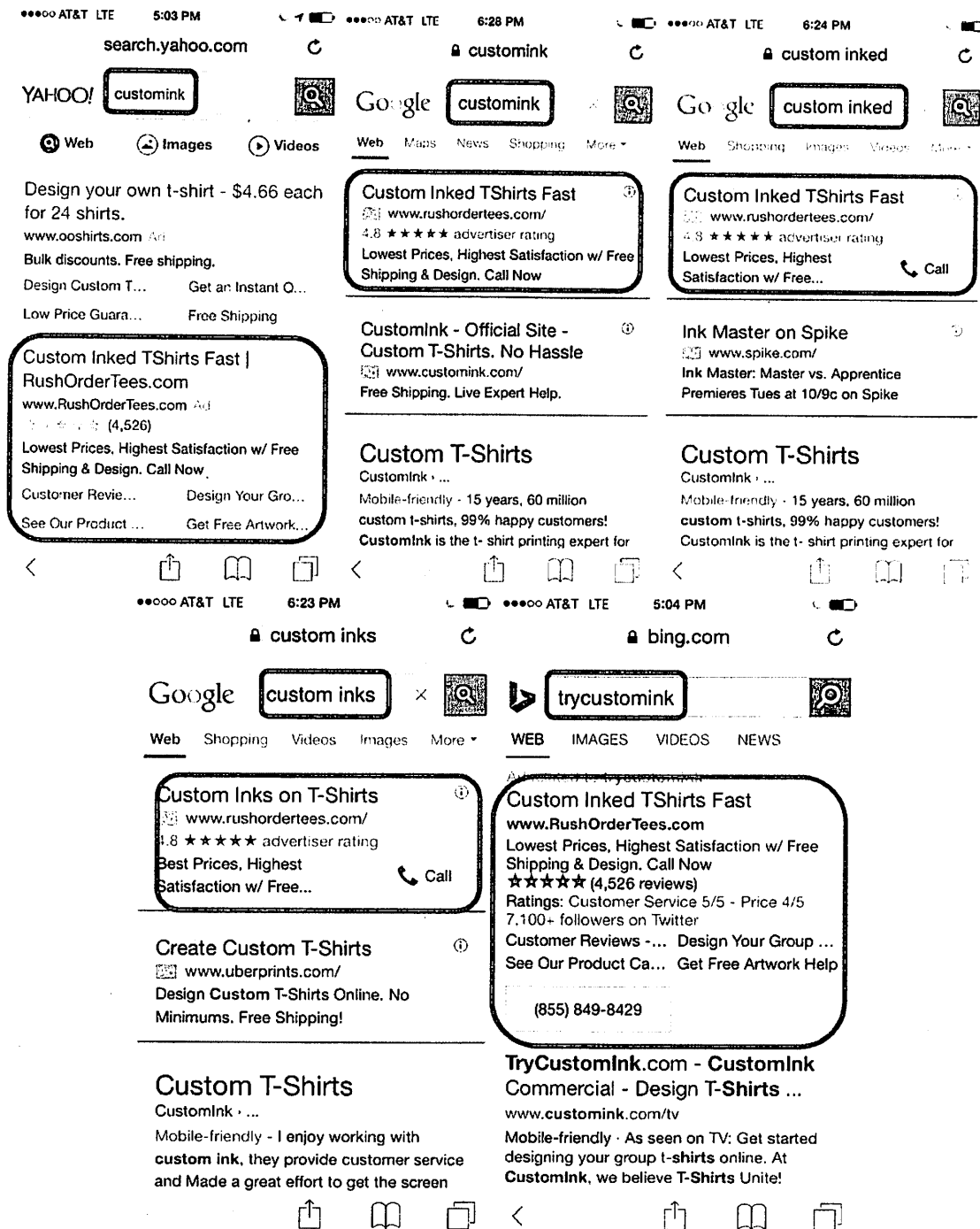
**Custom Ink T-Shirts Fast - Free 1-week Shipping. Best Prices!**  
[www.RushOrderTees.com](http://www.RushOrderTees.com) (855) 849-8429  
 5.0 ★★★★★ rating for [rushorderteas.com](http://rushorderteas.com)  
**Free 1-week Shipping. Best Prices! Free Design, Compare & Get More.**  
**Custom Inked T-Shirts - Over 9-Million Custom Shirts Inked**

Customer Reviews - 5 Star	Design Your Group Tees
See Our Product Catalog	Get Free Artwork Help

**CustomInk Official Site**  
[CustomInk.com](http://CustomInk.com)  
 5.0 ★★★★★ rating for [customink.com](http://customink.com)  
**Custom T-Shirts. No Hassles. Free Shipping. Live Expert Help.**  
**Custom T-Shirts - Design Your Own T-Shirts Online - Free Shipping**

The Lab	Products
Unisex	Sweats
T-Shirts	Youth

ChildCare.com customink



30. Defendant's prominent and lead use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK in the headings of its paid search engine advertisements—which, as shown above, in many instances appear directly above CustomInk's

own paid search engine advertisements and/or links to the CustomInk Site—is intended to misdirect consumers in search of the CustomInk Site to the Rushordertees Site and otherwise create the false and erroneous impression that the products and services provided by Defendant through the Rushordertees Site have been approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

31. As a direct result of one of Defendant's deceptive paid search engine advertisements, a return CustomInk customer mistakenly called Defendant to discuss a re-order of custom-designed products from CustomInk after being confused into believing that the telephone number provided in Defendant's advertisement was CustomInk's telephone number.

32. Thereafter, when the confused CustomInk customer realized that she was not speaking with a CustomInk representative, as she intended, the Printfly representative deceptively and inaccurately advised the customer that CustomInk was no longer in business, but that Defendant could fulfill her order. The Printfly representative further asked the confused CustomInk customer to send Defendant the artwork that she had previously submitted CustomInk, and stated that Defendant could provide her with a better price than CustomInk.

33. Defendant also is intentionally and prominently using the terms CUSTOM INK, CUSTOM INKED and TRY CUSTOM INK on the landing page and other pages of the Rushordertees Site, in an effort to draw CustomInk customers to the Rushordertees Site and create a false and erroneous impression that the products and services provided by Defendant through the Rushordertees Site have been approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

34. Screenshots of certain examples of Defendant's prominent and unlawful use of the substantially indistinguishable and/or confusingly similar terms CUSTOM INK, CUSTOM

INKED and TRY CUSTOM INK on the Rushordertees Site appear below:

Custom Ink on T-Shirts Fast

Lower Prices, Best Quality, Delivered Free in 1-Week!

[START DESIGN](#)

Choose a Product for Custom Ink Designs

- ✓ FREE Shipping
- ✓ FREE Design Help
- ✓ LOW Prices

Rush Shipping Guaranteed by Monday, May 11

Free Shipping Guaranteed by Thursday, May 21

Watch our design process

[Click for 1-on-1 Assistance](#)

Custom Ink T-Shirts Fast

Best Prices, Best Quality, Free Delivery & Design Support!

[START DESIGN](#)

Choose a Product for Custom Ink Designs

- ✓ FREE Shipping
- ✓ FREE Design Help
- ✓ LOW Prices

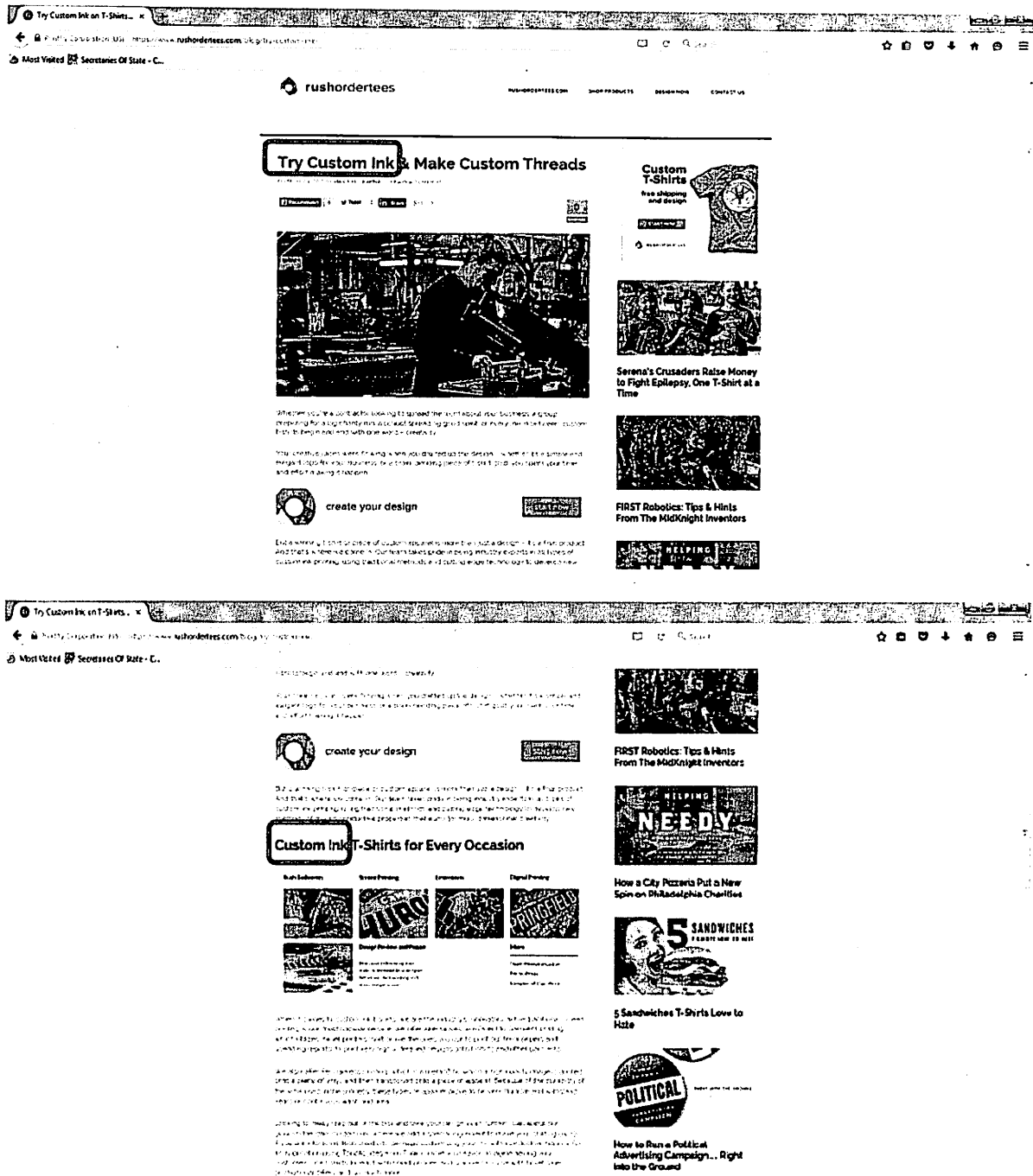
Rush Shipping Guaranteed by Thursday, June 18

Free Shipping Guaranteed by Friday, June 26

Watch our design process

[Let's Talk!](#)

Chat with a T-Shirt Hero!

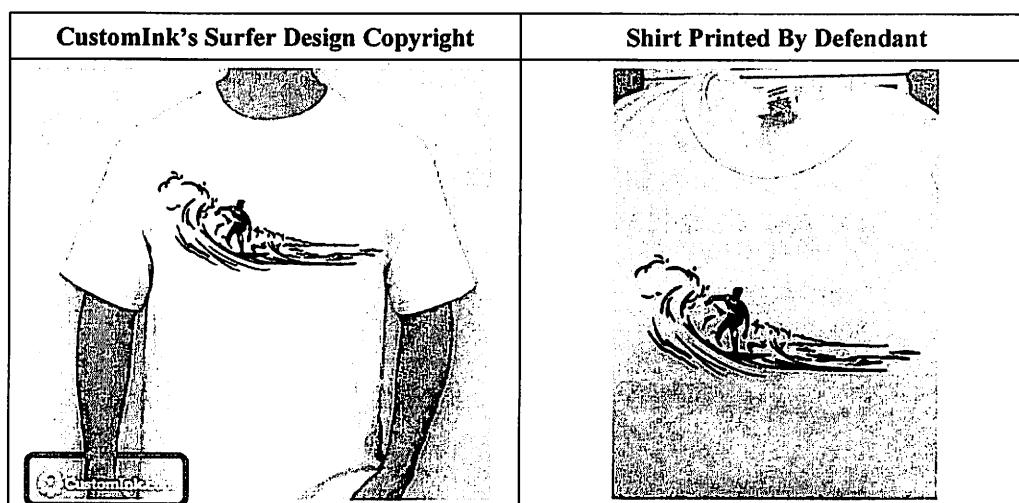


35. Defendant's use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK in the headings and text of paid search engine advertisements and on the landing page and other pages of the Rushorderteeshirts Site has caused, and, on

information and belief, will continue to cause, confusion among CustomInk's customers and prospective customers. Among other things, prospective customers who encounter Defendant's prominent use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK, both in search engine advertisements and on the Rushorderteeshirts Site, are likely to be confused as to whether the products and services provided by Defendant through the Rushorderteeshirts Site have been approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

36. In addition, Defendant has knowingly and intentionally engaged in the unauthorized copying and reproduction of CustomInk's Surfer Design Copyright and, on information and belief, has knowingly and intentionally engaged in the unauthorized copying and reproduction of additional CustomInk proprietary graphic designs.

37. Specifically, Defendant knowingly processed a customer's order requesting that it print t-shirts featuring CustomInk's Surfer Design Copyright. Indeed, as depicted below, the image of CustomInk's Surfer Design Copyright that the customer provided to Defendant included a prominent CustomInk watermark:



38. CustomInk did not give Defendant permission or authority to reproduce the Surfer



Design Copyright for its own commercial advantage and financial gain.

39. On information and belief, Defendant has also engaged in false advertising and deceptive trade practices in an effort to increase its share of the customized apparel market.

40. For example, recognizing the value of marketing itself as being completely transparent when it comes to customer reviews (as CustomInk is widely recognized as being), and in order to give the false impression that it has confidence in its customer reviews, Defendant prominently touts that it has “3000+ Raving Reviews” and purports to post “100% Unfiltered Customer Reviews” on the Rushorderteers Site to support its claim of “99.8% Customer Satisfaction”—a percentage that has curiously remained static for many months. Despite Defendant’s claim of “3000+ Raving Reviews” and that its reviews are “100% Unfiltered” and “uncensored”, only a fraction (approximately one-third) of Defendant’s purported “3000+ Raving Reviews” are actually posted on the Rushorderteers Site for review, and, on information and belief, only that subset of customer reviews appear to have been factored into Defendant’s curiously static claim of “99.8% Customer Satisfaction”.

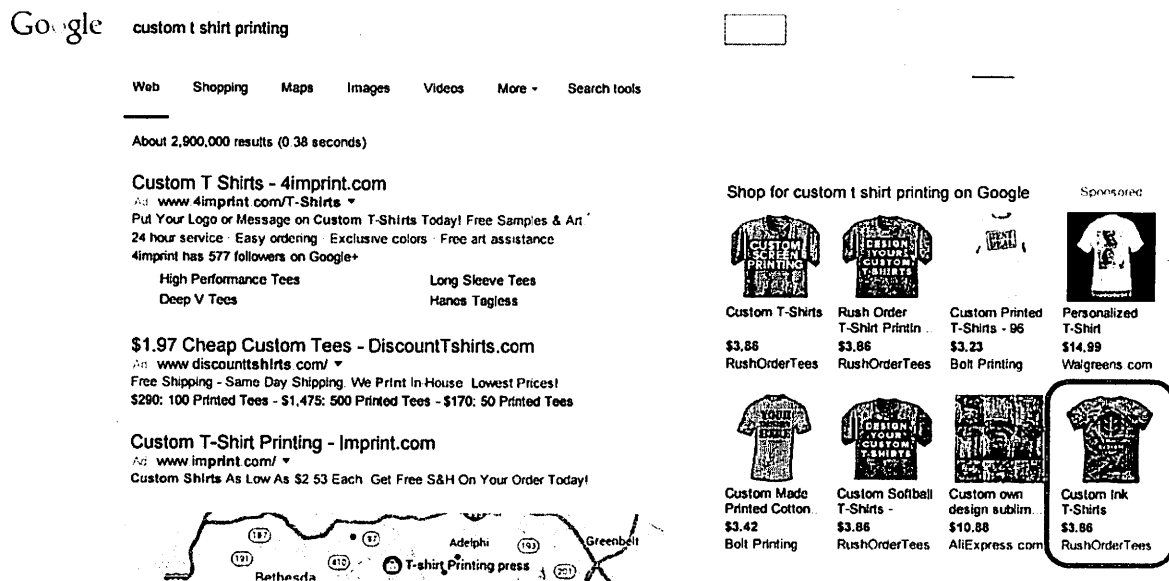
41. Moreover, on information and belief, the “customer reviews” that Defendant touts on the Rushorderteers Site are neither unfiltered nor uncensored, but carefully curated to maintain Defendant’s bogus claim of “99.8% Customer Satisfaction”. Indeed, on information and belief, Defendant purposefully culls unfavorable customer reviews from those that it presents to the consuming public and describes as being “100% Unfiltered” and “uncensored”. On information and belief, Defendant purposefully engages in such conduct to deceive the consuming public into believing that the customer reviews selected for display on the Rushorderteers Site are no different from the live, truly uncensored customer reviews that stream on the CustomInk Site.

42. Similarly, the Rushorderteers Site has continuously run the same promotion—

“25% off Sitewide + Free Shipping - *promo applied*”—for approximately the last six months.

On information and belief, this promotion is artificial and intentionally deceptive, as Defendant has not openly and actively offered its services at the claimed baseline pricing for a reasonably substantial period of time, in the recent regular course of business. Such deceptive pricing, which violates FTC guidelines, is intended to dupe consumers into believing that they have received a significant bargain—*i.e.*, “25% off” Defendant’s standard pricing—when, in fact, the so-called discount pricing is merely Defendant’s standard pricing in disguise.

43. In addition, Defendant has engaged in deceptive advertising of the pricing of its custom-designed apparel. For example, as depicted in the screenshot below, Defendant advertises its custom-designed t-shirts—using an orange t-shirt with black and white printing—at a price of \$3.86 per shirt:



44. Contrary to the clear commercial impression of Defendant’s advertisement—*i.e.*, that a consumer can order orange t-shirts with black and white printing from the Rushorderteas Site for \$3.86 per shirt—when a consumer clicks on Defendant’s paid-for product listing

advertisement and is directed to the Rushorderteeshirts Site landing page, the customer learns that the advertised price of \$3.86 per shirt only applies to the purchase of “100 one color single sided custom printed white t-shirts.” Defendant does not sell custom-designed orange t-shirts with black and white printing for \$3.86 per t-shirt. As shown in the screenshot below, the t-shirt depicted in Defendant’s advertisement for \$3.86 t-shirts, actually costs \$5.42 per t-shirt:

## Custom T-Shirts

Easily Design Your T-Shirts Online

Upload your design, create online using our design tools, or let our team design for free!



**\$5.42 EACH**

Price based on 100 one color single sided custom printed white t-shirts or buy blank from **\$3.86**

45. Likewise, on information and belief, Defendant has engaged in deceptive advertising relating to the purported speed of its custom printing services and the free delivery of its custom-designed apparel. As depicted in the screenshots below, Defendant makes prominent claims in its advertising and on the Rushorderteeshirts Site that it is the “Nations Fastest Screen Printer” and that it offers the “Fastest Free Shipping” of custom-designed apparel available:

rush order tees fastest free shipping - Google Search

Google


Web Shopping News Images Videos More Search tools

About 954,000 results (0.40 seconds)


**Rush Tees - RushOrderTees.com**  
 Ad: [www.rushordertees.com/](http://www.rushordertees.com/) ✓  
 Fast & Guaranteed Delivery Dates Call Now for a Quick Turnaround  
 Free Shipping & Design! Fast & Easy - Get Support  
 You've visited rushordertees.com 5 times Last visit: today

**RushOrderTees.com: Custom T-Shirts Fast, Design Online ...**  
<https://www.rushordertees.com/> ✓  
 25% Off fast custom t-shirts, best prices, free shipping & design Support Over 13 million custom t-shirts printed  
 Design Your Own Short ... - T-Shirts - Choose a Different Item - Contact Us  
 You've visited this page many times Last visit: 8/25/15


Shop for rush order tees fastest fre... on Google Sponsored



**Rush Order T-Shirt Printing - Nations Fastest Screen Printer**  
**\$3.88 - RushOrderTees**  
 Free Shipping & Design Support on All Orders!



**Fast T-Shirt Printing - Nations Fastest Screen Printer**  
**\$3.88 - RushOrderTees**  
 Free Shipping & Design Support on All Orders!



Fast Deliveries

99.8% Customer Satisfaction

**Free Shipping**Guaranteed by Fri  
September 04

Eric H.

★★★★★

We had one week to print and ship five custom T-shirts for a charity event which seemed hopeless; then we found

Susan C.

★★★★★

I know a thing or two about customer service, exceeding expectations and unrealistic deadlines



46. The clear commercial impression of Defendant's advertising and promotional claims—i.e., "Nations Fastest Screen Printer" and "Fastest Free Shipping"—is that Defendant will deliver a customer's order of custom-designed apparel, free of any delivery charge, faster than any other custom-design screen printer, including, without limitation, CustomInk.

47. On information and belief, these advertising and promotional claims made by Defendant are false, because CustomInk delivers its custom-designed apparel, free of any delivery charge, faster or at the same speed as Defendant.

48. On information and belief, Defendant has made these false claims with the intent to deceive the consuming public into believing that it provides the fastest free delivery of custom-designed apparel available, and thereby gain market share and artificially inflate the status of the Rushorderteens Site in the highly competitive custom-designed apparel marketplace.

49. Unless Defendant's conduct is enjoined, such conduct will continue to severely inhibit and/or destroy CustomInk's ability to identify its services under its federally-registered CUSTOMINK Marks, harm the extensive goodwill that CustomInk has developed in the CUSTOMINK Marks, severely inhibit and/or destroy CustomInk's ability to exploit the Surfer Design Copyright, and cause CustomInk to suffer a loss of business revenue and irreparable harm.

### COUNT I

(Trademark Infringement - Lanham Act § 32, 15 U.S.C. § 1114)

50. The allegations of paragraphs 1 through 49 are incorporated herein by reference.

51. CustomInk owns federal trademark registrations for the CUSTOMINK Marks.

52. CustomInk has marketed, advertised and promoted its products and services under the CUSTOMINK Marks and as a result of this marketing, advertising and promotion, the CUSTOMINK Marks are understood to signify the products and services of CustomInk, and are the means by which those products and services are distinguished from those of others in the same and related fields.

53. At all relevant times herein, Defendant has had actual and constructive knowledge

and notice of the CUSTOMINK Marks.

54. The activities of Defendant described herein have caused and are likely to continue to cause confusion, deception and mistake by creating a false and erroneous impression that the products and services provided, offered, advertised and marketed by Defendant through the Rushorderteas Site are approved, sponsored and/or endorsed by CustomInk, or are in some way connected or affiliated with CustomInk and/or the CustomInk Site.

55. CustomInk is informed and believes, and on that basis alleges, that Defendant's violations of the Lanham Act have been and continue to be intentional, willful and without regard to CustomInk's rights.

56. CustomInk is informed and believes, and on that basis alleges, that Defendant has gained profits by virtue of its infringing actions.

57. CustomInk is also informed and believes, and on that basis alleges, that it has sustained damages as a result of Defendant's violations of the Lanham Act, including a decline in sales, the erosion of its market share, the loss of goodwill, increased advertising expenses and additional losses and damages.

58. Unless Defendant is enjoined, Defendant will continue to promote its products and services by unlawfully using the CUSTOMINK Marks, CUSTOM INK, CUSTOM INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto in the United States and in this jurisdiction.

59. CustomInk will continue to suffer irreparable harm unless Defendant is temporarily, preliminarily, and permanently restrained from continuing to use the CUSTOMINK Marks, CUSTOM INK, CUSTOM INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto.

60. Issuance of injunctive relief is justified by Defendant's conduct, is needed to avert irreparable harm, is justified by the balance of the equities, and is in the public interest.

61. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to an Order requiring Defendant to account for any and all profits and other ill-gotten gains Defendant derived from its use of the CUSTOMINK Marks, CUSTOM INK, CUSTOM INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto, and to an Order awarding all damages sustained by CustomInk by reason of Defendant's conduct.

62. Defendant's actions have been willful, malicious and fraudulent, with knowledge of the likelihood of deception, and with intent to deceive.

63. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to recover multiplied or enhanced damages.

64. This is an "exceptional case" under 15 U.S.C. § 1117(a), and therefore CustomInk is entitled to an award of attorneys' fees and costs.

## **COUNT II**

(Unfair Competition and False Designation of Origin - Lanham Act § 43(a)(1)(A),

15 U.S.C. § 1125(a)(1)(A))

65. The allegations of paragraphs 1 through 64 are incorporated herein by reference.

66. As described above, Defendant's use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK has caused and is likely to continue to cause confusion, mistake and deception among the trade as to the source of Defendant's products and services, or as to a possible affiliation, connection or association between CustomInk and Defendant in violation of 15 U.S.C. § 1125(a)(1)(A).

67. The ongoing acts of Defendant constitute a false designation of origin and unfair

competition in violation of Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A).

68. As a result of Defendant's wrongful conduct, CustomInk has been irreparably harmed and is facing further imminent irreparable harm for which there is no adequate remedy at law.

69. CustomInk will continue to suffer irreparable harm unless Defendant is temporarily, preliminarily, and permanently restrained from continuing to use the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK.

70. Issuance of injunctive relief is justified by Defendant's conduct, is needed to avert irreparable harm, is justified by the balance of the equities, and is in the public interest.

71. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to an Order requiring Defendant to account for any and all profits and other ill-gotten gains Defendant derived from its use of CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK, and to an Order awarding all damages sustained by CustomInk by reason of Defendant's conduct.

72. Defendant's actions have been willful, malicious and fraudulent, with knowledge of the likelihood of deception, and with intent to deceive.

73. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to recover multiplied or enhanced damages.

74. This is an "exceptional case" under 15 U.S.C. § 1117(a), and therefore CustomInk is entitled to an award of attorneys' fees and costs.

### **COUNT III**

(False and Deceptive Advertising - Lanham Act § 43(a)(1)(B),

15 U.S.C. § 1125(a)(1)(B))

75. The allegations of paragraphs 1 through 74 are incorporated herein by reference.



76. As described above, on information and belief, Defendant has engaged in various acts of false advertising and deceptive trade practices, including, without limitation, (a) purporting to display “100% Unfiltered Customer Reviews” on the Rushorderteers Site to support its claim of “99.8% Customer Satisfaction”, when in fact the customer reviews have been carefully selected to maintain Defendant’s bogus claim of “99.8% Customer Satisfaction”, (b) continuously running the same artificial promotion—“25% off Sitewide + Free Shipping - *promo applied*”—when in fact the so-called discount pricing is nothing more than Defendant’s standard pricing in disguise, (c) using bait-and-switch pricing tactics to lure potential customers to the Rushorderteers Site, and (d) falsely claiming that it is the “Nations Fastest Screen Printer” and that it offers the “Fastest Free Shipping” (*i.e.*, the fastest free delivery to a customer’s door) of custom-designed apparel available.

77. Likewise, Defendant has made intentional misrepresentations about CustomInk to consumers for the express purpose disparaging CustomInk and diverting business from CustomInk to itself.

78. The ongoing acts of Defendant constitute false and deceptive advertising in violation of Section 43(a)(1)(B) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

79. As a result of Defendant’s wrongful conduct, CustomInk has been irreparably harmed and is facing further imminent irreparable harm for which there is no adequate remedy at law.

80. CustomInk will continue to suffer irreparable harm unless Defendant is temporarily, preliminarily, and permanently restrained from continuing to misrepresent the nature, characteristics and qualities of its goods and services in commercial advertising and promotional materials.

81. Issuance of injunctive relief is justified by Defendant's conduct, is needed to avert irreparable harm, is justified by the balance of the equities, and is in the public interest.

82. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to an Order requiring Defendant to account for any and all profits and other ill-gotten gains Defendant derived from its misrepresentations as to the nature, characteristics and qualities of its goods and services in commercial advertising and promotion, and to an Order awarding all damages sustained by CustomInk by reason of Defendant's conduct.

83. Defendant's actions have been willful, malicious and fraudulent, with knowledge of the likelihood of deception, and with intent to deceive.

84. Pursuant to 15 U.S.C. § 1117(a), CustomInk is entitled to recover multiplied or enhanced damages.

85. This is an "exceptional case" under 15 U.S.C. § 1117(a), and therefore CustomInk is entitled to an award of attorneys' fees and costs.

#### **COUNT IV**

##### **(Common Law Trademark Infringement)**

86. The allegations of paragraphs 1 through 85 are incorporated herein by reference.

87. The aforesaid conduct of Defendant constitutes trademark infringement under the common law of Virginia.

88. Unless Defendant is enjoined, Defendant will continue to promote its products and services by unlawfully using the CUSTOMINK Marks, CUSTOM INK, CUSTOM INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto in the United States and in this jurisdiction.

89. CustomInk will continue to suffer irreparable harm unless Defendant is

temporarily, preliminarily, and permanently restrained from continuing to use the CUSTOMINK Marks, CUSTOM INK, CUSTOM INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto.

90. Issuance of injunctive relief is justified by Defendant's conduct, is needed to avert irreparable harm, is justified by the balance of the equities, and is in the public interest.

### **COUNT V**

(Copyright Infringement - 17 U.S.C. § 501, *et seq.*)

91. The allegations of paragraphs 1 through 90 are incorporated herein by reference.

92. CustomInk is the sole owner of the Surfer Design Copyright.

93. Defendant has infringed CustomInk's Surfer Design Copyright (U.S. Copyright Registration No. VA 1-786-641).

94. On information and belief, Defendant's conduct has been willful within the meaning of the Copyright Act. At a minimum, on information and belief, Defendant has acted with willful blindness to and in reckless disregard of CustomInk's rights in and to the Surfer Design Copyright.

95. As a result of the wrongful conduct, Defendant is liable to CustomInk for copyright infringement. CustomInk has suffered damages. CustomInk is entitled to recover actual damages, which include any and all profits Defendant has made as a result of the wrongful conduct. Alternatively, CustomInk is entitled to statutory damages up to and including the maximum amount under 17 U.S.C. § 504(c).

96. CustomInk is also entitled to injunctive relief pursuant 17 U.S.C. § 502 and to an order impounding any and all infringing materials pursuant to 17 U.S.C. § 503. CustomInk has no adequate remedy at law for Defendant's wrongful conduct because, among other things, (a)

the Surfer Design Copyright is unique and valuable property, which does not have a readily determinable market value, (b) Defendant's infringement harms CustomInk such that no monetary award is itself adequate, and (c) Defendant's wrongful conduct, and the resulting damage to CustomInk, is continuing.

97. CustomInk is also entitled to recover its attorneys' fees and costs of suit under 17 U.S.C. § 505.

#### **COUNT VI**

(Deceptive or Misleading Advertising - Va. Code §59.1-68.3; §18.2-216)

98. The allegations of paragraphs 1 through 97 are incorporated herein by reference.

99. Defendant's deceptive and misleading advertising, and its use of fraudulent, deceptive and misleading practices in order to induce sales of its products and services, and artificially inflate the status of the Rushorderteers Site violate Virginia Code § 18.2-216 and support a claim for damages and attorneys' fees under Virginia Code § 59.1-68.3.

100. Defendant published deceptive and misleading advertising about its Rushorderteers Site and the products and services it offers which it knew to be deceptive and/or misleading, and engaged in other practices it knew to be deceptive and misleading, with an intent to sell the products and services offered in connection with the Rushorderteers Site.

101. Defendant engaged in such deceptive and misleading advertising and in such deceptive and misleading practices to induce sales of its products and services.

102. Defendant has made and continues to make substantial profits as a result of its deceptive and misleading advertising and its deceptive and misleading practices.

103. As a result of Defendant's acts in violation of Virginia Code § 18.2-216, CustomInk has suffered substantial losses, and is entitled to recover damages and attorneys' fees

under Virginia Code § 59.1-68.3.

**PRAYER FOR RELIEF**

WHEREFORE, CustomInk prays for judgment as follows:

- (a) that Defendant be found to have willfully infringed CustomInk's rights in and to the CUSTOMINK Marks under 15 U.S.C. § 1114;
- (b) that Defendant be found to have willfully engaged in false designation of origin and unfair competition with respect to its use of the terms CUSTOM INK, CUSTOM INKS, CUSTOM INKED and TRY CUSTOM INK under 15 U.S.C. § 1125(a)(1)(A);
- (c) that Defendant be found to have willfully engaged in false advertising under 15 U.S.C. § 1125(a)(1)(B);
- (d) that Defendant be found to have willfully infringed CustomInk's rights in and to the CUSTOMINK Marks under the common law of Virginia;
- (e) that Defendant be found to have willfully infringed CustomInk's rights in the Surfer Design Copyright under 17 U.S.C. § 501;
- (f) that Defendant be found to have engaged in deceptive and misleading advertising, and/or deceptive and misleading practices in connection with the advertising of the Rushorderteers Site and Defendant's products and services, in violation of Virginia law;
- (g) the Defendant and all of those acting in concert with it, including its agents and servants, and all those on notice of this suit, be preliminarily and permanently enjoined from: (i) marketing promoting, distributing, selling or offering to sell any services or products under the CUSTOMINK Marks, CUSTOM INK, CUSTOM

INKS, CUSTOM INKED, TRY CUSTOM INK and/or other marks that are confusingly similar thereto, (ii) reproducing, publicly displaying, making any derivative works from, distributing or otherwise infringing the Surfer Design Copyright and/or any other proprietary two-dimensional graphic designs owned by CustomInk, (iii) engaging in any activity constituting false advertising, and (iv) engaging in any activity constituting unfair competition with CustomInk, or acts and practices that deceive the public and/or trade;

- (h) that Defendant be required to take such other measures as the Court may deem appropriate to prevent the public and/or the trade from deriving the erroneous impression that the services and/or products offered by Defendant are affiliated with, sponsored by, authorized by, related to or associated in any way with CustomInk;
- (i) that Defendant be directed to pay to CustomInk all profits realized by Defendant as a result of its infringement, false designation of origin and unfair competition, and false advertising pursuant to 15 U.S.C. § 1117 and other applicable laws and statutes;
- (j) that CustomInk be awarded treble damages and three times the amount of Defendant's illicit profits pursuant to 15 U.S.C. § 1117 and other applicable laws and statutes;
- (k) that Defendant be directed to pay to CustomInk money damages sustained by reason of Defendant's copyright infringement, the exact amount to be proven at trial, together with interest thereon; or if elected prior to final judgment, statutory damages pursuant to 17 U.S.C. § 504(b);

- (l) that Defendant pay CustomInk's reasonable attorneys' fees, costs, and expenses incurred in connection with this action pursuant to 15 U.S.C. § 1117 and 17 U.S.C. § 505;
- (m) that CustomInk be awarded prejudgment interest on any monetary award made part of the judgment against Defendant; and
- (n) that CustomInk be awarded such additional and further relief as the Court deems just and proper.

**JURY DEMAND**

CustomInk hereby demands trial by jury on all issues so triable under Fed. R. Civ. P. 38.

Respectfully submitted,

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